

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

**FILED**

OCT 26 2011

DENNIS MALIPURATHU,

Plaintiff,

vs.

RAYMOND JONES et al.,

Defendants.

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ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY Yuh DEPUTY

No. CIV-11-646-W

**ORDER**

On September 22, 2011, United States Magistrate Judge Gary M. Purcell issued a Supplemental Report and Recommendation in this matter and recommended that the Motion Seeking Default Judgment Against Defendant Raymond Jones filed by plaintiff Dennis Malipurathu be denied. Malipurathu was advised of his right to object, and the matter now comes before the Court on Malipurathu's Motion to Object to Defendant Jones--Default Judgement. See Doc. 50.

Upon de novo review of the record, the Court concurs with Magistrate Judge Purcell's suggested disposition of Malipurathu's request that default judgment be entered against defendant Jones.

Malipurathu brought this action seeking relief under title 42, section 1983 of the United States Code on June 8, 2011. Jones, one of the many individuals named as a defendant in the amended complaint, is identified as the "Chief Executive Officer of D.A.R.P.<sup>1</sup> Foundation." Doc. 14 at 2, ¶ 2.

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<sup>1</sup>The initials D.A.R.P. stand for "Drug and Alcohol Rehabilitation Program."

Jones was served with process on August 5, 2011, see Doc. 21, and although Jones electronically filed his answer to the allegations in Malipurathu's amended complaint on August 25, 2011, see Doc. 28, Malipurathu did not receive the copy of that pleading<sup>2</sup> that was mailed to him until September 9, 2011. See Doc. 50 at 3-4.

Rule 55, F.R.Civ.P., which governs default judgments, mandates a two-step process. First, the party seeking a default judgment must obtain an entry of default from the Clerk of the Court after a showing that the opposing party "has failed to plead or otherwise defend." Rule 55(a), supra. Because Malipurathu failed to seek an entry of default from the Clerk as required by Rule 55(a), he is not entitled to relief under this rule.

Accordingly, the Court

(1) ADOPTS the Supplemental Report and Recommendation [Doc. 45] issued on September 22, 2011; and

(2) DENIES Malipurathu's Motion Seeking Default Judgment Against Defendant Raymond Jones [Doc. 35] file-stamped September 6, 2011.

ENTERED this 26th day of October, 2011.

  
LEE R. WEST  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup>Jones has advised the Court that he first became aware that Malipurathu had not received a copy of the answer when Malipurathu filed his Motion Seeking Default Judgment as to Defendant Raymond Jones. See Doc. 43 at 1-2. Jones has further advised that he mailed a second copy of his answer to the plaintiff.